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In The

Supreme Court of the United States

October Term, 1995

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

Petitioners,

vs.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY, AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Respondents.

Petition for A Writ of Certiorari to the Superior Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the First Amendment of the United States Constitution preclude the Pennsylvania court's exercise of jurisdiction over a corporate controversy related to the succession of office defined by the corporate bylaws, custom and practices of the church where fraud and mismanagement are alleged?

2. Was the summary foreclosure of an opportunity for Petitioner to demonstrate that the instant controversy was secular and not doctrinal or essentially an ecclesiastical matter a violation of due process of law?

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

Petitioners — The Church of The Lord Jesus Christ of the Apostolic Faith, Roddy J. Nelson Shelton, I; Roddy J. Nelson Shelton, II; Frank Matthews.

Respondents — Erik Shelton, Kenneth Shelton, Alonzo Woodward Reagan, Fincourt B. Shelton, John Carlton Thomas, Daniel Bowens, George Brown, Individually and as Trustees of the Church of The Lord Jesus Christ of the Apostolic Faith, Inc. There are no parent corporations or nonwholly owned subsidiaries or other parties to this proceeding.

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OPINIONS BELOW

The Order denying Petitioner's Petition for Allowance of Appeal from the Supreme Court of Pennsylvania-Eastern District, No. 95-1004 (Pennsylvania Supreme Court, April 30, 1996, Per Curiam) is unreported. Said Order is reprinted in the attached Appendix A, pp. 1a-2a.

The Judgment, Order and Opinion in the matter of *Church of the Lord Jesus Christ of the Apostolic Faith v. Erik Shelton, et al.*, No. 94-03125 (Pennsylvania Superior Court, November 20, 1995) is unreported. Said Judgment, Order and Opinion is reprinted in the attached Appendix B, pp. 3-6a.

The trial court Opinion in the matter of *Church of the Lord Jesus Christ of Apostolic Faith v. Erik Shelton, et al.*, CP9206-1887 (Philadelphia Court of Common Pleas, April 8, 1995), is unreported. Said Opinion is reprinted in the attached Appendix C, pp. 7a-12a. The Order of the trial court sustaining Respondents' Preliminary Objections, No. 2101, November Term, 1991 (Philadelphia Court of Common Pleas, August 2, 1994) is unreported. Said Order is reprinted in the attached Appendix G, p. 29a.

The Order of the trial court denying Plaintiff's Request for a Preliminary Injunction, No. 2101, November Term, 1991 (Philadelphia Court of Common Pleas, November 20, 1991) is unreported. Said Order is reproduced in the attached Appendix D, p. 14a. The opinion of the trial court denying Petitioner's Request for a Preliminary Injunction No. 2101, November Term 1991 (Philadelphia Court of Common Pleas, November, 20, 1991) is unreported. The transcript of the opinion is attached as Appendix F, p. 19a.

The Order of the trial court for hearing on the Preliminary Injunction, No. 2101, November Term, 1991 (Philadelphia Court of Common Pleas, November 17, 1991) is unreported. Said Order is reprinted in the attached Appendix E, p. 15a.

STATEMENT OF JURISDICTION

The judgment of the Superior Court of Pennsylvania was entered on November 20, 1995. A Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied on April 30, 1996. Petitioner seeks review of the Judgment of the Superior Court of Pennsylvania.

The jurisdiction of the Honorable Court is conferred pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment I of the United States Constitution directs, in pertinent part, that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section One of the Fourteenth Amendment of the United States Constitution states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

> are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania Rule of Civil Procedure 229(c) regarding "Discontinuances", directs in pertinent part that:

> (a) A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial;
>
> * * *
>
> (c) The court, upon petition and after notice, may strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense, or prejudice.

Pennsylvania Rule of Civil Procedure 1017 regarding "Pleadings Allowed", directs in pertinent part that:

> (a) Except as provided by Rule 1041.1, the pleadings in an action are limited to a complaint, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a

> counterclaim contains new matter, a preliminary objection and an answer thereto.

Pennsylvania Rule of Civil Procedure 1028 regarding "Preliminary Objections" provides in pertinent part that:

> (a) Preliminary objections may be filed by any party to any *pleading* . . . .

(Emphasis added).

Title 15 of the Pennsylvania Consolidated Statutes Annotated, Section 5101, provides in pertinent part that its:

> . . . subpart shall be known and may be cited as the Nonprofit Corporation Law of 1988.

Title 15 of the Pennsylvania Consolidated Statutes Annotated, Section 5764.1, which pertains to actions by members of nonprofit corporations in the Commonwealth of Pennsylvania, provides in pertinent part that:

> **(a) General rule. — Except as provided in subsection (b) of this section, in any action brought to enforce a secondary right on the part of one or more members against any officer or director, or former officer or director, of a nonprofit corporation because such corporation refuses to enforce its rights which may properly be asserted by it, the plaintiff or plaintiffs must aver and it must be made to appear, that the plaintiff or each plaintiff was a member of such corporation at the time of the transaction of which he complains.**

STATEMENT OF THE CASE

The Trustees of General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc, is a Pennsylvania nonprofit corporation created under the not-for-profit laws of the Commonwealth of Pennsylvania, 15 Pa.C.S.A., § 5101 *et seq.* The corporation was duly formed in 1947, under the direction of Bishop S.C. Johnson, who was President of the corporation until his death in 1961. In 1961, upon the death of Bishop Johnson, Samuel McDowell Shelton, then General Secretary of the corporation, ascended to the office of the President of the Corporation and General Overseer, consistent with the corporate bylaws, practices and custom.[1] Thereafter, in September 1977, President Shelton nominated Roddy J.N. Shelton, I, to be Secretary General. The General Assembly of the corporation ratified the nomination. When the President of the Corporation, Bishop Samuel McDowell Shelton died, on October 13, 1991, according to the corporate bylaws, custom and practice, General Secretary Roddy J.N. Shelton, I was to succeed the deceased. Because Respondents refused to follow the bylaws, custom and practice which dictated that Roddy J.N. Shelton, I ascend to the office of the presidency, Petitioners sought to enjoin the Respondent members of the Board of Trustees from refusing to allow the orderly, legitimate succession.

The Complaint upon which the Petition for Preliminary Injunction rested alleged, inter alia, misrepresentation as well as violation of the corporate bylaws, and unlawful interference with the business of the corporation which caused loss of Church property, disharmony and other disruptive consequences. On November 20, 1991, after hearing testimony, the Honorable Abraham J. Gafni dismissed the preliminary injunction, but not

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1. Article XVI of the corporate bylaws states in pertinent part that the General Secretary shall succeed the President upon the death of the President.

the complaint, concluding that the controversy concerned "a serious tribunal dispute with respect to who is authorized to act as the religious leader for a church." (Appendix F, p. 24a). The court, however, added:

> That is not to say that the Court may not ultimately find itself involved in this matter.
>
> It well may be, and I'm sure counsel are aware of this, that cases do indicate that if there are suggestions of fraud, mismanagement or other matters the Court may involve itself in the management of the business or practices or the management of the assets of the corporation, and this it may do. . . . [I]f any of the exceptions whereby the Court may intrude in the affairs of the church come into play, this Court stands ready to involve itself. Under such circumstances the Preliminary Objections requesting that this Court determine that the Court is without Jurisdiction to entertain this motion at least in its current posture will be allowed and the request for a preliminary injunction alone will be dismissed. . . . If this Court has brought to its attention any suggestion that there is mismanagement or fraud either in the selection of officials or in the management of the assets, . . . I want to tell you that if that occurs you will not have any difficulty in asserting jurisdiction in the matter.

(Appendix F, pp. 24a, 26a).

Thereafter, Petitioners and Respondents arrived at an agreement whereby the determination of which person would become President and General Overseer would be made by the Board of Trustees of the corporation at a meeting of the General Assembly which was to be convened on December 29, 1991. Based on this understanding, on November 27, 1991, Petitioners filed an Order to Withdraw, Discontinue and End the Matter. However, Respondents failed to carry out the terms of this agreement, instead taking steps unlawfully to amend the corporate bylaws and unilaterally to remove Petitioners as Trustees at a meeting for which notice had not been given under the corporate election statutes.[2] Furthermore, drawing upon unlawfully obtained authority as Trustees, in February 1992 Respondents ordered Petitioners and their supporters barred from entering the church buildings, threatened them, and physically expelled some 250 of them when they entered for worship.

In June 1994, Petitioners who continued to be concerned about the Respondents' unlawful acts, including their improper dealings involving corporate finances and property, and physical abuse of church members, sought to set aside the aforementioned Order to Withdraw Discontinue and End by filing a Petition to Set Aside and Vacate the Order To Withdraw, Discontinue and End. However, on August 2, 1994 after Respondents filed preliminary objections to the petition, contesting jurisdiction, but before the preliminary objections were answered by Petitioners, the trial court entered an order denying the petition. (Order of Judge DiBona, Appendix G, p. 29a). In an opinion in response to Petitioners' appeal from that Order, Judge DiBona of the Court of Common Pleas of Philadelphia[3] concluded that

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2. 15 Pa. C.S.A. § 5703 requires five-day, written notice of every special meeting of the Board of a nonprofit corporation.

3. Since Judge Gafni had retired, the matter was assigned to the Honorable Alfred J. DiBona, Jr. of the Philadelphia Court of Common Pleas.

Judge Gafni's conclusion, that the court lacked jurisdiction over the Petition for Preliminary Injunction because the controversy was essentially doctrinal, was dispositive of this subsequent effort to set aside the discontinuance. Judge DiBona opined that the trial court had effectively and properly dismissed the Petitioners' action for lack of jurisdiction — as Judge Gafni had ruled in the earlier effort to secure a preliminary injunction — because the substantive dispute still concerned the ascendancy to the position of General Overseer, a matter essentially ecclesiastical and one calling for Pennsylvania's "deference rule." Judge DiBona thus rejected Petitioners' contention that they were entitled to answer the Preliminary Objections of the Respondents before the Petition to Vacate was denied.

The Pennsylvania Rules of Civil Procedure provide that after a discontinuance has been entered, a court may, upon petition, strike off the discontinuance and enter an Order to protect the rights of any party in certain circumstances. *Palmatier v. Palmatier,* 19 D. & C. 3d 566 (1981). Petitioners filed such a Petition in this matter.

Specifically, Pennsylvania Rule of Civil Procedure 229(c) provides that:

> (c) The Court, upon *petition* and after notice, my strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense or prejudice.

(Emphasis added).

The party seeking to have a discontinuance stricken must show that he has been deprived of a substantial right, will be prejudiced by the discontinuance or has suffered actual

prejudice. *Hudson v. Cohen*, 47 D. & C. 2d 510, 511 (1966). Moreover, Rule 229 (c) does not establish a time within which a motion to strike a discontinuance must be filed. *Nastsiak v. Scoville Enterprises, Ltd.*, 421 Pa. Super. 542, 618 A.2d 471 (1992). In the instant case, Petitioners argued that they were erroneously denied the opportunity to show deprivation or the vexatious behavior of Respondents.

Pennsylvania Rule of Civil Procedure 1017 reads in pertinent part as follows:

> (a) Except as provided by Rule 1041.1, the pleadings in an action are limited to *a complaint, an answer hereto, a reply if the answer contains new matter or counterclaim, a counter-reply, if the reply to the counterclaim contains new matter, a preliminary objection and the answer hereto.*

(Emphasis added). Petitioners therefore argue that a Petition to Vacate an Order to Withdraw, Discontinue and End is not a pleading and that similarly, a Petition to Vacate an Order to Withdraw, Discontinue and End is not a pleading to which Preliminary Objections may be filed in response thereto.

Petitioners further reasons that while Preliminary Objections may be permitted to contest the jurisdiction of a court, they may only be filed in response to a pleading, and not a Petition to Vacate. Thus lower court not only improperly sustained Respondents' Preliminary Objections, but did so prematurely and without allowing Petitioners the opportunity to respond to the Preliminary Objections and show the Court that it did in fact have jurisdiction over this matter, as more fully explained herein.

Petitioner appealed Judge DiBona's decision to the Pennsylvania Superior Court, contending, *inter alia,* that the court did have jurisdiction over corporate matters about which they were complaining. However, agreeing that the matter "involves a challenge to church leadership which is doctrinal or ecclesiastical in nature" and that the "critical issue is our courts' lack of jurisdiction in this doctrinal matter," the Superior Court affirmed the lower court's decision "on the basis of its opinion." (Judgment Order, Appendix B, p. 3a.). The Pennsylvania Supreme Court summarily denied allocatur on this matter by order dated April 30, 1996. (Appendix A, p. 1a.).

REASONS FOR GRANTING THE WRIT

I.

THE PENNSYLVANIA APPELLATE COURT'S AFFIRMANCE OF THE RULING BY JUDGE DI BONA THAT THE TRIAL COURT LACKED JURISDICTION IS INCONSISTENT WITH THE PREVAILING FEDERAL RESPONSE TO SEPARATION OF CHURCH AND STATE CONCERNS IN INTRA-CHURCH DISPUTES AND WITH PENNSYLVANIA PRECEDENT.

The First Amendment does not preclude consideration of allegations related to corporate succession of office and of mismanagement of business affairs and finances by church leaders or claims related to bad faith conduct and fraud of those leaders. Thus the concerns which are alleged by Petitioners to lie at the heart of this controversy are not the kind which are beyond the court's jurisdiction because they are considered essentially "doctrinal" or "ecclesiastical" in nature.

In *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713, 95 S. Ct. 2372, 49 L. Ed. 2d 151 (1976), this Court

recognized the constitutional mandate known as the deference rule initially set forth in *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872). The rule simply provides that civil courts are bound to accept the decision of the highest jurisdiction of a religious organization of hierarchical policy on matters of discipline, faith or ecclesiastical rule, custom or law. This Court explained in *Kedroff v. St. Nicholas Cathedral Church of Russian Orthodox Church,* 344 U.S. 74, 73 S. Ct. 143, 87 L. Ed. 720 (1952) that First Amendment values would be jeopardized by permitting civil courts to resolve doctrinal disputes, permitting anyone aggrieved by decisions of religious bodies to simply appeal to the secular courts and have them reversed. *Id.* at 115, 73 S. Ct. at 154. The rule of deference was thus developed in contemplation of the dangers of excessive entanglement.

In contrast, this controversy is one that should be resolved by a civil court because it concerns corporate law, essentially a civil matter — a dispute that can be resolved by "neutral principles" of law in ways which do not jeopardize First Amendment values. *See Jones v. Wolf,* 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969). Affirming the constitutionality of a neutral-principle approach to resolve a dispute over the ownership of church property following a schism (and rejecting the dissent's position that a compulsory deference approach is constitutionally required in such a dispute involving rival religious factions), this Court in *Jones v. Wolf, supra,* 443 U.S. at 602, 99 S. Ct. at 3025, stated:

> The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.

In factual contexts involving property disputes, Pennsylvania courts similarly have utilized a neutral-principle approach. Thus they have generally applied the rule of deference mindful of their responsibility to continue to resolve disputes that are civil in nature or able to be considered under neutral-principle analysis. As the Supreme Court of Pennsylvania itself recognized in a case involving a dispute about property ownership between two church organizations, *Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317, *cert. denied*, 474 U.S. 887, 106 S. Ct. 198, 88 L. Ed. 2d 167 (1985), notwithstanding the importance of deference:

> All disputes among members of a congregation, however, are not doctrinal disputes. Some are simply disputes as to meaning of agreement on wills, trusts, contracts, and property ownership. These disputes are questions of civil law and are not predicated on any religious doctrine. . . . [T]he question of what [members] agree to, or whether they agreed at all, are not doctrinal and can be resolved without intruding into the sacred precincts.

Id. at 260, 489 A.2d 1320, *citing Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* Indeed in *Poesnecker v. Ricchio*, 158 Pa. Commw. 459, 631 A.2d 1097, 1099 (1993), *cert. denied*, 115 S. Ct. 727, 130 L. Ed. 2d 632 (1995), the Pennsylvania Commonwealth Court approved the trial court's application of neutral principles in concluding that a leader's removal from a corporate office of a society engaged in a mixture of religious, fraternal and corporate activity was justified, recognizing that "civil courts may resolve disputes involving churches that do not require a determination of

ecclesiastical issues." Consistent with this reasoning, the Commonwealth Court of Pennsylvania concluded that it was proper to refrain from removing the same leader from a religious position in the organization. Notably, in the *Poesnecker* case the trial court applied Pennsylvania's nonprofit corporation statutory law, law which Petitioners argue is determinative in the controversy at issue in this case. Thus while the rule of deference may preclude the court from determining who is the proper person to occupy the position of religious authority — the issue that appeared to occupy the attention of Judge Gafni in the hearing to consider whether a preliminary injunction should issue — a court can properly make a determination as to whether actions violated nonprofit corporation law, even removing a leader from a corporate position, if necessary. *See id.* at 475, 631 A.2d at 1099.

Noting the tension in delineating settings where the court must yield to the principle of deference and circumstances where courts are not proscribed from entertaining and resolving disputes which raise civil questions, the Pennsylvania Supreme Court has recognized that error can result from too broad reliance on the deference rule. *Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church, supra,* 507 Pa. at 263, 489 A.2d at 1321. The factual context of the dispute at issue is critical.

In these factual circumstances, two principal considerations should have affected the determination of the courts:

First, the action was brought against individuals of the corporation in their individual capacities as well as in their capacities as members of the Board of Trustees concerning acts in contravention of corporate bylaws, practice and custom. It is Petitioners' contention that the suit is governed by the state laws of incorporation and they seek enforcement of bylaws and

application of corporate law principles to resolve issues related to the election and appointment of corporate officers, improper dealings with respect to corporate finances and property, and physical abuse and threats of members. In short, in resolving the instant dispute the court is asked to apply legal principles which are neutral. Indeed, the review of contested corporate actions are found in Pennsylvania's Non-Profit Corporation Act of 1988, 15 Pa. C.S.A. § 5793(a), which allows court determination of the validity of nonprofit corporate action.

The instant case can be distinguished from factual settings where the dispute falls somewhere between the two categories — doctrinal or governed by neutral principles — enunciated in *Middlesex, supra. See, e.g., Atterberry v. Smith,* 104 Pa. Commw. 550, 522 A.2d 683 (1986) (dispute about the authority of the church pastor to act unilaterally to appoint his successor; court concluded that resolution of the ultimate question calls not only for an examination of the form of church government, but also for a determination of what powers the local pastor has with respect to appointment and removal of church officers.) Indeed the Pennsylvania court in *Atterberry, supra,* 104 Pa. Commw. at 555, 522 A.2d at 686, acknowledged that in property controversies involving neutral principles, a civil court is not precluded from scrutinizing religious documents, provided it considers them "in purely secular terms [*i.e.*, does not intrude into impermissible areas of a doctrinal nature]." *Jones v. Wolf, supra,* 443 U.S. at 604, 99 S.Ct. 3025. This approach is consistent with federal law. *Compare id.* (approved neutral-principles analysis of property dispute basing decision on language of deeds, church charter terms and state statutes) with *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,, supra,* 393 U.S. 440, 89 S.Ct. 601 (1969) (Georgia's implied trust theory used in resolving church property dispute held to be too intrusive a review of tenets and doctrines of church).

Nor is this a case where the subject matter of the dispute is unequivocally at its core an ecclesiastical matter. *E.g., Gundlach v. Laister,* 155 Pa. Commw. 319, 325, 625 A.2d 706, 709 (1993) (admissions decisions about church membership subject to church rules and controlled by the decisions of the appropriate church tribunals in so far as they do not contravene the civil law). *Compare 40th Street & Fairmount Avenue Church of God v. Stover,* 310 F. Supp. 375 (E.D. Pa. 1970) (no jurisdiction to make inquiry as to right of individual minister to conduct services in certain church).

Second, as Judge Gafni acknowledged at the preliminary injunction hearing, notwithstanding the rule of deference, courts can and should become involved when fraud and mismanagement of church assets are involved. Judge Gafni's conclusion that the court lacked jurisdiction to intrude in the church affairs, rendered at the most preliminary stage of this controversy, should not have prevented the court subsequently from reviewing Petitioners' claims of improper corporate conduct or from refocusing the court's attention on charges of fraud and mismanagement after Petitioners' good faith efforts to resolve the dispute informally were rebuffed by Respondents' bad faith actions. *See Serbian Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at 713, 96 S. Ct. at 2382, 49 L. Ed. at 151, *citing Gonzalez v. Archbishop,* 280 U.S. 1, 50 S. Ct. 5, 74 L. Ed. 141 (1929) (judicial review of even ecclesiastical determinations my be appropriate in the face of fraud); *see also Gundlach v. Laister, supra,* 155 Pa. Commw. at 325, 625 A.2d at 709 (membership is purely an ecclesiastical matter subject to the church rules and controlled by the decisions of the appropriate church tribunals *in so far as they do not contravene civil law)* (italics added). As this Court recognized in *Serbian Eastern Orthodox Diocese v. Miliovojevich, supra,* 426 U.S. at 711, 96 S. Ct. at 2381, *Gonzalez v. Archbishop, supra,* 280 U.S. at 18, 50 S. Ct. at 8, adverted to the possibility of at least limited civil court review in

cases challenging church decisions as the product of "fraud, collusion or arbitrariness," though no decision by this Court has yet given concrete content to that exception.[4] It is Petitioners' contention that Respondents acted in bad faith by failing to abide by the original agreement made by and between members of the Board of Trustees and acted fraudulently and unlawfully in failing to give proper notice of meetings in connection with election of officers, and preventing Petitioners and their supporters from entering corporate property. Unlike the controversies in *Gonzalez* or *Milivojevich* these are matters which civil courts are fully competent to resolve, utilizing neutral principles, and free of ecclesiastical doctrine.

Even a broad application of the deference rule should not preclude consideration of these contentions. Notwithstanding Judge Gafni's ruling on the preliminary injunction, a court should consider whether there is adequate basis supporting such claims of fraud and mismanagement before rendering a decision to dismiss the Petition to Vacate the Order to Withdraw, Discontinue and End for lack of jurisdiction.

In summary, the Pennsylvania courts' disposition in this case is not dictated by the First Amendment and is inconsistent with the Commonwealth of Pennsylvania's neutral-principle approach to resolving church-related disputes.

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4. Although this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich, supra* rejected an arbitrariness exception, it did not reject the possibility of civil court review on the grounds of fraud or collusion. Notably, this Court was troubled by the clearly ecclesiastical nature of the decision making in that case.

II.

THE PENNSYLVANIA COURT FORECLOSED AN OPPORTUNITY FOR PETITIONERS TO DEMONSTRATE THAT THE MATTERS IN CONTROVERSY WERE MORE CIVIL THAN ECCLESIASTICAL IN NATURE, OR INVOLVED THE KIND OF UNLAWFUL CONDUCT WHICH REQUIRED JUDICIAL INVOLVEMENT, THEREBY VIOLATING PETITIONERS' RIGHT TO DUE PROCESS OF LAW.

Petitioners were neither afforded the opportunity to answer Respondents' Preliminary Objections nor permitted a hearing concerning the substance of the Petition To Vacate the Order to Withdraw, Discontinue and End. Consequently, by granting the Respondents' Preliminary Objections, the court deprived Petitioners of the opportunity to demonstrate that what Judge Gafni feared had come true — fraud and mismanagement by the Respondents had occurred — or to entertain arguments on the merits of the Petitioners' contention that the heart of the controversy was a disagreement resolvable by civil law.

The Pennsylvania Superior Court's reliance on the rule of deference to foreclose judicial involvement without further inquiry beyond Judge Gafni's preliminary ruling is troublesome particularly in light of Pennsylvania's neutral-principle approach to intra-church disputes. Such a narrow interpretation of the court's ability to inquire into allegations of misconduct would have the consequence of permitting officers and agents of churches and other religious institutions to engage in misconduct and hide behind a shield of the First Amendment, victimizing members of congregations who would be without recourse to complain if corporate-owned property were

dissipated or church authority abused. This narrow approach, effectively shutting out Petitioners' opportunity to inform the court how the use of neutral principles can address the wrongs which have occurred, is inconsistent with what Pennsylvania has interpreted as the proper balance of judicial involvement in intra-church disputes discussed, *supra,* and is also at odds with federal case law in related areas of the First Amendment. *See, e.g., Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.,* 477 U.S. 619, 106 S. Ct. 2718, 91 L. Ed. 2d 512 (1986) (not improper for commission to assert jurisdiction over claim that Christian school discriminatorily discharged teacher; commission hearing on charges of sex discrimination not prohibited by First Amendment nor overly intrusive to determine whether religious justification for discharge exists); *General Council on Finance & Administration, United Methodist Church v. California Superior Court,* 439 U.S. 1369, 1371, 99 S. Ct. 35, 37, 58 L. Ed. 2d 77 (1978) (First Amendment concerns which arise in intra-church disputes do not defeat consideration of grounds for asserting jurisdiction by the court over a church which is one of several parties in a dispute). In other contexts, Pennsylvania case law has respected both the interests of preserving First Amendment values and the need to exercise supervision to protect secular interests. For example, courts have recognized the need to assert their authority when religious practices interfere with private relationships in the community; *e.g., Robert Bear v. Reformed Mennonite Church,* 462 Pa. 330, 341 A.2d 105 (1975) (shunning practices interfering with business relationships) or when order is threatened. *See, e.g., Atterberry v. Smith, supra,* 104 Pa. Commw. 550, 552 A.2d 683 (1987). *See also Maryland & Virginia Eldership v. Church of God,* 396 U.S. 367, 90 S. Ct. 499, 24 L. Ed. 2d 582 (1979). Because civil courts should resolve disputes involving churches that do not require a determination of ecclesiastical issues, the threshold question for resolution is whether the dispute at its heart involves questions of civil law. The failure to afford an

opportunity to adjudicate this issue beyond the most preliminary stage unconstitutionally compromises Petitioners' rights.

It is well settled in Pennsylvania that civil courts can resolve disputes involving churches that do not require a determination of ecclesiastical issues, *See Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church, supra,* 507 Pa. at 266, 489 A.2d at 1323 ("In cases where the resolution of a property dispute involves no inquiry into ecclesiastical questions, courts of this Commonwealth are to apply the same principles of law as would be applied to non-religious associations."). Here the issue becomes whether the due process clause of the Fourteenth Amendment requires an opportunity to respond at this stage of the proceedings and in light of facts which have come to light subsequent to the preliminary injunction hearing. *See, e.g., Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 542, 105 S. Ct. 1487, 1493, 84 L. Ed. 2d 494 (1985) (opportunity for employee to present his side of case of obvious value prior to termination); *Matthews v. Eldridge,* 424 U.S. 319, 332, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976) (fundamental requirement of due process is the opportunity to be heard at meaningful time and meaningful manner). In these circumstances, the failure to afford an opportunity to adjudicate this controversy beyond the most preliminary stage seriously compromises Petitioners' rights.[5]

---

5. *Compare* the courts' reasoning in the following cases: *Burns v. Gadsen State Community College,* 908 F.2d 1512 (11th Cir. 1990) (underscoring the importance in an employment discrimination suit of giving the nonmovant party a meaningful opportunity to respond to a motion for summary judgment); *Bradley v. Pittsburgh Board of Education,* 913 F.2d 1064 (3rd Cir. 1990), *citing Brobst v. Columbus Services International,* 761 F.2d 1148 (3d Cir. 1985), *cert. denied,* 484 U.S. 1043, 108 S. Ct. 777, 98 L. Ed. 2d 863 (1988) (by granting summary judgment pursuant to a motion in limine that

(Cont'd)

CONCLUSION

Petitioners respectfully submit that their Petition For a Writ of Certiorari to the Superior Court of Pennsylvania should be granted.

Respectfully submitted,

LEON W. TUCKER
Counsel of Record
Attorney for Petitioners
Suite 1300, Robinson Building
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Philadelphia, PA 19102
(215) 568-8040

Date: July 30, 1996

(Cont'd)
was based on other grounds district court effectively precluded plaintiffs from marshalling the record evidence that had already been accumulated on this issue and permitted their filing affidavits); *Gay v. Wall*, 761 F.2d 175 (4th Cir. 1985) (in addition to notice, a party must be afforded a reasonable opportunity for discovery before a 12(b)(6) motion may be converted and summary judgment granted).

APPENDIX A — ORDER OF THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT DATED APRIL 30, 1996

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 1004 Eastern District
Allocatur Docket 1995

Petition for Allowance of Appeal from Superior Court

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

Petitioners,

v.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, IND., AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Respondents.

ORDER

PER CURIAM:

AND NOW, this 30th day of April, 1996, the Petition for Allowance of Appeal is hereby DENIED.

Appendix A

TRUE COPY FROM THE RECORD
ATTEST: April 30, 1996

s/ Patricia Johnson
PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

APPENDIX B — JUDGMENT AND JUDGMENT ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA FILED NOVEMBER 20, 1995

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 03125 PHILADELPHIA 1994

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

APPELLANTS

V.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

Appeal from the Order Dated August 02, 1994, Docketed August 03, 1994, In the Court of Common Pleas of Philadelphia County, No. 2101 Nov. Term, 1991.

BEFORE: DEL SOLE, BECK, and HUDOCK, JJ.

JUDGMENT

ON CONSIDERATION WHEREOF, *it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* PHILADELPHIA *County be, and the same is hereby* AFFIRMED.

Appendix B

BY THE COURT:

s/ illegible
PROTHONOTARY

Dated: NOVEMBER 20, 1995

Appendix B

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 03125 PHILADELPHIA 1994

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

APPELLANTS

V.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

Appeal from the Order Dated August 02, 1994, Docketed August 03, 1994, In the Court of Common Pleas of Philadelphia County, No. 2101 Nov. Term, 1991.

BEFORE: DEL SOLE, BECK, and HUDOCK, JJ.

JUDGMENT ORDER

This matter involves a challenge to church leadership which is doctrinal or ecclesiastical in nature. The action in equity sought a preliminary injunction that was denied based on a lack of jurisdiction. *See Atterberry v. Smith,* 522 A.2d 683 (Pa. Commw. 1987) (matters of church policy are best left to ecclesiastical tribunals). The action was later withdrawn by

plaintiffs' counsel. Plaintiffs then filed a Petition to Vacate the Order to Withdraw, Discontinue and End the action. Preliminary objections to the petition based on lack of jurisdiction were filed and sustained, and this appeal followed. Appellants raise specific procedural challenges, but the critical issue is our courts' lack of jurisdiction in this doctrinal matter. *Gundlach v. Laister,* 625 A.2d 706 (Pa. Commw. 1993); *Orthodox Church of America v. Pavuk,* 538 A.2d 632 (Pa. Commw. 1988). We affirm the lower court's decision on the basis of its opinion.

Order affirmed.

APPENDIX C — OPINION OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED APRIL 8, 1995

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JUNE TERM, 1992

NO. 1887

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, et al

v.

ERIK SHELTON, et al

OPINION

DI BONA, J. DATE: APRIL 8, 1995

This is an appeal taken by the plaintiffs from this Court's Order of August 2, 1994, which denied the plaintiffs' Petition to Vacate the Order to Withdraw, Discontinue and End filed by plaintiffs on November 27, 1991. The procedural history of this case which led up to the denial of the aforesaid motion is relatively simple. Plaintiffs' Complaint in Equity and request for a Preliminary Injunction was filed on November 18, 1991. The Honorable Abraham J. Gafni held a hearing on November 19, 1991. The testimony at the hearing disclosed that the central dispute was one concerning the leadership of the church and the control of the hierarchy of the church organization. Judge Gafni held that there was no jurisdiction of the matter in the courts and that it should be decided by those persons still in authority (namely the Board of Trustees) within the church. No

reconsideration of this decision regarding jurisdiction was ever requested. No appeal of this decision was ever taken. On November 27, 1991, nine days after the Complaint in Equity was filed, the plaintiffs filed an Order to Withdraw, Discontinue and End the case.

On June 16, 1994, six months after the named plaintiff, Roddy J. Nelson Shelton I died, the church filed a Petition to Vacate the previously filed Order to Withdraw, Discontinue and End. The defendants filed a response to the Petition to Vacate in the nature of Preliminary Objections on July 22, 1994. The Preliminary Objections raised the identical issue to that raised before Judge Gafni two and one-half years before, namely the lack of jurisdiction. On Appeal, the plaintiffs assert that this Court erred in a) entering its August 2, 1994, Order before the August 22, 1994, response date due for the answer to defendants' Preliminary Objections, and b) entering an Order ruling on Preliminary Objections since Preliminary Objections are not a proper filing in the instant case. Unfortunately, plaintiffs attempt to create a smokescreen by choosing form over substance.

Rule 1028 of the Pa. Rules of Civil Procedure provide as follows:

> "(a) Preliminary Objections may be filed by any party *to any pleading* and are limited to the following grounds:
>
> (1) *lack of jurisdiction* over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;" (emphasis added).

Appendix C

Defendants' reply to plaintiffs' Petition to Vacate in the form of Preliminary Objections is clearly permitted by the rules of procedure. Next, the plaintiffs contend that the Court should have waited until plaintiffs filed a response to the Preliminary Objections. This position seeks to circumvent the central critical issue in this case which has been present (and ruled upon) since its very inception, the lack of jurisdiction. Plaintiffs seek to vacate an order which withdrew and ended a case in which Judge Gafni ruled there was no jurisdiction. The reason there was no jurisdiction is quite obvious, the courts are without power to decide church disputes which are doctrinal or ecclesiastical in nature. In *Atterberry v. Smith*, __ Pa. Cmwlth. __, 522 A.2d 683 (1987) it was held that:

> "In setting forth the law to be employed where the issue to be settled is a dispute involving a church our State Supreme Court has recently explained that a threshold determination must be made as to whether the dispute is one which is doctrinal in nature or instead involves only questions of civil law. *Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317, *cert. denied*, __ U.S. __, 106 S. Ct. 198, 88 L. Ed. 2d 167 (1985). The *Middlesex* Court recognized that where the dispute involves principles of civil law, such as ownership of property, it can be solved 'without intruding into the sacred precincts' by employing neutral principles of law. *Id.* at 262, 489 A.2d at 1320-21. Where, however, the resolution of the issue involves questions of discipline,

faith, ecclesiastical rule, custom, or law, a civil court must defer to the highest church judicatory to which the question has been carried. *Id.* at 259, 489 A.2d at 1319 (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872). *See also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713, 96 S. Ct. 2372, 2382, 49 L. Ed. 2d 151 (1976) (adding to the list of areas foreclosed from civil court intrusion of church's 'internal organization'). The wisdom of this 'deference rule' as it came to be known was recognized by the *Middlesex* Court when it wrote:

> [T]he right to practice one's belief and worship as one chooses is so deep a root of our constitutional culture that a court, even one with the best intentions, can be no more than a clumsy intruder into the most delicate and sensitive areas of human life. When Caesar enters the Temple to decide what the Temple believes, he can leave behind only his own views. The view of a court as to who are heretics among warring sects is worth nothing, and must count as nothing if our cherished diversity of religious views is to prevail.

Id. 507 Pa. at 260, 489 A.2d at 1320.

Appendix C

> As instructed by *Middlesex*, our initial task must be to determine whether the instant dispute is doctrinal or civil in nature. Although the trial court was not asked to decide a pure question of belief or faith, neither was the question one concerning a matter which is totally civil in nature, such as the ownership of property. Instead the issue seems to fall somewhere between the two categories enunciated in *Middlesex*. Resolution of the ultimate question calls not only for an examination of the form of church government, but also for a determination of whether Reverend Whyte is in fact the local pastor and what, if any, powers the local pastor has with respect to appointment and removal of church officers. In our view these latter questions in particular are more akin to doctrinal questions than to civil ones. Our determination that the instant dispute is primarily doctrinal is based upon *Watson* as well as one of its more recent progeny, *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), both of which indicate that matters of church policy are best left to ecclesiastical tribunals."

522 A.2d 683 at 685-686.

Clearly, the appointment and removal of church officers is primarily doctrinal. See also *Orthodox Church of America v. Pavuk*, __ Pa. Cmwlth. __, 538 A.2d 632 (1988) and *Gundlach v. Laister*, __ Pa. Cmwlth. __, 625 A.2d 706 (1993).

Appendix C

Judge Gafni had made the preliminary determination that the substantive dispute concerning Rev. Shelton's ascendancy to the position of General Overseer was doctrinal in nature and, therefore, the deference rule was applied. In the two and one-half year interim, nothing had changed which would warrant departing from Judge Gafni's determination that this Court lacked jurisdiction over the subject matter of this suit. Therefore, the Petition to Vacate was denied. The Order of this court dated August 2, 1994, should stand accordingly.

s/ Di Bona
ALFRED J. DI BONA, JR.
J.

APPENDIX D — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED NOVEMBER 20, 1991

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Attorneys for Plaintiffs

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, and RODDY J. NELSON SHELTON I, General Overseer and RODDY J. NELSON SHELTON, II, Trustee and FRANK MATTHEWS, Trustee

PLAINTIFFS

vs.

ERIK SHELTON and KENNETH SHELTON and ALONZO WOODWARD REAGAN and FINCOURT B. SHELTON and JOHN CARLTON THOMAS and DANIEL BOWENS and

Appendix D

GEORGE BROWN INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

DEFENDANTS

ORDER

AND NOW, this 20th day of November, 1991, after hearing, it is ORDERED and DECREED that Plaintiff's Petition for Preliminary Or Special Injunction is denied as the Court has determined that it is without jurisdiction to involve itself in what it perceives to be a doctrinal matter, and it is hereby ORDERED and DECREED that the duly authorized officer shall be prevented from participating in their administrative duties and responsibilities.

BY THE COURT:

s/ Abraham J. Gafni
ABRAHAM J. GAFNI, J.

APPENDIX E — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED NOVEMBER 17, 1991

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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

____ Term
No. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC. and RODDY J. NELSON SHELTON I, General Overseer and RODDY J. NELSON SHELTON, II, Trustee and FRANK MATTHEWS, Trustee

PLAINTIFFS

vs.

ERIK SHELTON and KENNETH SHELTON and ALONZO WOODWARD REAGAN and FINCOURT B. SHELTON and JOHN CARLTON THOMAS and DANIEL BOWENS and GEORGE BROWN INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

DEFENDANTS

Appendix E

ORDER

AND NOW, this 17th day of November, 1991, upon consideration of the verified Complaint in Equity, and Motion of Plaintiffs and having determined that:

1. Plaintiffs and members of The Church of the Lord Jesus Christ of the Apostolic Faith, Inc., will suffer permanent and irreparable harm and loss if Defendants, individually, collectively and in their capacity as Board of the Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., are permitted to interfere with the religious worship services and or business and corporate affairs of the membership of The Church of the Lord Jesus Christ of the Apostolic Faith, Inc., located at 22nd & Bainbridge Streets, Philadelphia, Pennsylvania, at all times hereafter.

2. Irreparable and permanent harm will result if the Defendants, as set forth in the caption, are permitted to maintain possession of church property taken after October 13, 1991, of any kind or to engage in any conduct which would promote discord or dissention in the business and affairs of the Church including, but not limited to entering onto Church property which will in and of itself interfere, interrupt, agitate and disrupt the religious and other legitimate affairs of the Church.

3. Plaintiffs and the members of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., will suffer irreparable harm and loss if Defendants do not return all keys and property to Plaintiff, Roddy J. Nelson Shelton I, General Overseer, or his designee and account for all finances and other property possessed by them and under their control as of October 13, 1991.

Appendix E

4. Plaintiffs has no adequate remedy at law.

5. Greater injury will be inflicted upon Plaintiffs by the denial of a temporary injunctive relief than would be inflicted upon Defendant by the granting of such relief.

IT IS HEREBY ORDERED AND DECREED THAT:

1. A restraining Order be issued upon security being entered by Plaintiffs in the amount of $ *security waived.*

2. Upon the entry of said security, if any, Defendants, each and all of them, individually, collectively and as the Trustee Board, are enjoined and restrained until hearing on this matter and thereafter until further Order of this Court, from interfering with the business and religious worship services of the members of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., at all times subsequent hereto.

3. Interfering with the business and corporate affairs of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., at all times subsequent hereto.

4. Interfering with the special affairs of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., at all times subsequent hereto.

5. Interfering with the Plaintiffs actions as General Overseer, of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.

6. Entering upon Church property for any purpose whatsoever but especially for interfering, interrupting,

disruptive conduct or initiating or agitating any dissention or disruptive conduct on Church property.

7. Defendants, each and all of them, collectively, individually, and in their capacity as Trustees, shall immediately deliver all keys and property of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., in their possession to the Plaintiff or his designee.

8. Defendants, each and all of them, collectively, and as the Board of Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., shall within twenty (20) days hereof, submit a written account for all finances and other property which came into their possession and under their possession and control as of October 13, 1991.

9. This Order shall remain in full force and effect until such time as this Court orders otherwise.

10. A Rule be issued to Defendants to Show Cause why a Preliminary Injunction should not be issued.

BY THE COURT:

s/ Di Bona

J.

APPENDIX F — TRANSCRIPT OF PROCEEDINGS DATED NOVEMBER 20, 1991

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., et al.

v.

ERIK SHELTON, et al.

Room 426, City Hall
Philadelphia, Pennsylvania

November 20, 1991

BEFORE: HONORABLE ABRAHAM J. GAFNI, J.

APPEARANCES:

LEON W. TUCKER, ESQUIRE
JOHN PAUL SIMKINS, ESQUIRE
Attorneys for Plaintiffs

FINCOURT B. SHELTON, ESQUIRE
Attorney for Defendants

Appendix F

[2] THE COURT: As counsel pointed out to me, we are here on a request for a preliminary injunction.

While much is alleged in the motion, essentially the issue that is before me here is whether Roddy J. Nelson Shelton should be permitted to assume the position of General Overseer and this by reason of proposed documents which would suggest that he was to assume that position by reason of the passing of the prior General Overseer.

During the break that we had I had an opportunity to review the many documents which have been submitted to me by counsel. And one of the reasons that I did that was for the purpose of determining exactly who and what is the General Overseer, what position does that overseer hold, what are the responsibilities of that overseer, and what authority may that overseer exercise.

The purpose of my so doing was because of the argument, which I believe both counsel have pretty much agreed to, that the Court may not involve itself in matters involving the interpretation of ecclesiastical [3] or canon law or doctrine.

On the other hand, courts may involve themselves in matters relating to what might be called civil property rights and things of that sort not otherwise involved in religious doctrine and practice.

In reviewing the by-laws and rules, and there has been some dispute as to what certain rules or by-laws or documents were that were adopted, there are certain documents which everybody agrees were adopted. And these discuss the responsibility and the authority of the General Overseer.

Appendix F

And it would appear to this Court that the General Overseer has virtually unlimited, unbridled and unqualified authority to override the action of virtually any other body within the church.

For example, under Article X, "The General Overseer shall have full authority to determine any question concerning parliamentary procedures and there shall be no appeal from the decision of the General Overseer."

Further in that article, "The [4] General Overseer shall be the full arbitrator on all matters affecting the interpretation doctrine applicable to The Church of the Lord Jesus Christ."

Continuing on to Article XI we find that any amendments to the by-laws or the rules or regulations must first "be submitted to the General Overseer who's approval is a condition presented to their submission to the General Assembly."

In addition to that there is a provision for cases of insubordination and grievance in which there is a committee composed of the General Overseer or nominee, the state elder and another man of good report among the saints chosen by the General Overseer but ultimately the General Overseer has full authority to suspend or expel any person from the General Assembly.

The overseer appoints investigative committees.

Final appeals are taken to the overseer.

The overseer has the power to suspend or expel any person so tried from the [5] General Assembly of the church or from any local assembly thereof.

Appendix F

In fiscal matters and in general management the overseer is always a trustee and the president of the board. But no member may be elected to be a trustee unless that person is first approved and nominated by the General Overseer.

And finally if there is any other conflict in the rules or regulations or by-laws the General Overseer will resolve those issues.

Under those circumstances the question is then presented to the Court as to whether a court, civil court, a court of the Commonwealth of Pennsylvania should involve itself in the question of who should be the General Overseer of this church, and whether if a court so involves itself it will be involving itself strictly in an interpretation of the by-laws, whether it will be involving itself in the matters of civil rights and responsibilities or whether it will be involving itself in ecclesiastical or religious doctrine and practice.

[6] In the opinion of the Court, having reviewed the various items which I have just recited here together with the other documents which have been presented to me, I am satisfied that these documents, at least as I understand them, would not allow this Court to distinguish between the responsibilities of the General Overseer insofar as they relate to the ecclesiastical and religious practice and as they relate to the civil practice.

I note further that in the document which was attached as Exhibit C to the petition and complaint, which was dated 1977, 30 September, there is reference to a direct succession. And the plaintiff Roddy J. Nelson is designated as the person in direct succession.

Appendix F

There are provisos in that respect, however, and they relate to providing that all persons named in this document, and that would of course include the aforesaid individual, are in good fellowship of The Church of the Lord Jesus Christ and the Royal Apostolic House of Shelton and as successor, Roddy J. Nelton Shelton.

[7] In other words, there are provisos insofar as they relate to this even if the person has been serving as General Secretary.

This Court is satisfied that were it to make a determination as to who should serve as General Overseer, in light of the very broad powers of the General Overseer it would be deciding not only how the business of the church should be managed, its money and its real estate and whatever other physical assets it may have in this world but it would essentially be determining who and how the religious and ecclesiastical doctrine and function of the church should be followed.

It's the opinion of the Court that at least at this point, at least on a preliminary injunction it is without authority to act in this regard.

For this Court to decide who will be the General Overseer would essentially be to determine who will be the individual who will decide all religious doctrine for this church. This the Court will not do.

The Court is particularly [8] reluctant to do so when we recognize that the person ultimately assigned and appointed as General Overseer would have the unbridled and unlimited right to expel from the church anyone with whom that individual disagrees.

Appendix F

Under such circumstances it is the belief of the Court that the matter should be returned to the church members and to the duly designated bodies which are currently in effect.

That is not to say that the Court may not ultimately find itself involved in this matter.

It well may be, and I'm sure counsel are aware of this, that cases do indicate that if there are suggestions of fraud, mismanagement or other matters the Court may involve itself in the management of the business or practices or the management of the assets of the corporation, and this it may do.

However, at this stage, at this time it will be necessary for this Court to determine that it has no jurisdiction.

Under these circumstances the [9] matter can return then to those people who are still in authority, which as I understand in a nonprofit corporation will remain the Board of Trustees who may then act accordingly.

The individual members of the church may seek such avenues of appeal within the church as they deem appropriate. They may do as appropriate within the church.

And, of course, if any of the exceptions whereby the Court may intrude in the affairs of the church come into play, this Court stands ready to involve itself.

At this point, however, it is very apparent that there is a serious tribunal dispute with respect to who is authorized to act as the religious leader for a church. And this Court is loathe to engage in such an activity.

Under such circumstances the preliminary objection requesting that this Court determine that the Court is without jurisdiction to entertain this motion at least in its current term posture will be allowed and the request for a preliminary injunction alone will be dismissed.

[10] Of course that does not dismiss the complaint. The matter still continues and can be brought up to the legal limited areas to which I made reference.

Is there anything further that either counsel wishes to say to me at this time?

MR. TUCKER: Yes, Your Honor.

It appears that the issue before the Court is not so much who should be the General Overseer but the procedure under which the person is to be the General Overseer.

The Court having ruled I would simply ask the Court for a trial date on the complaint.

MR. SHELTON: Your Honor, I've got until December 18 under the rules to answer their complaint. I have not filed an answer. I will file an answer on or before December 18 as required under the rules.

THE COURT: You may do so and I will give you that time to do so.

Let me, however, advise everyone and warn everyone. As I indicated, [11] the issue as presented to me was really who was going to take over the management right now, and once I

determined that the General Overseer is so integrally involved in the management of the religious aspects of the organization I was not prepared to do so.

However, I want to be very careful and caution everybody that I have not said that the courts will not otherwise be involved. I did indicate that the courts can do become involved.

If this Court has brought to its attention any suggestion that there is mismanagement or fraud either in the selection of officials or in the management of the assets, any one member of the organization has the right to say that my board of trustees or my officers are doing wrong.

And I want to tell you that if that occurs you will not have difficulty in asserting jurisdiction in the matter.

May I also add that one of the problems that we have in this case, unlike many of the other cases to which both counsel made reference, is that in most instances what [12] you had was a local authority, a local church where there wasn't in existence a higher authority because they were part of a larger hierarchy.

In this case we are actually dealing with the top of the hierarchy so there is no higher group.

When you have that situation the general practice is to go to the group — and everybody makes reference to the articles of incorporation. And I believe I'm also somewhat familiar with both corporate and noncorporate law.

And ultimately the people who are going to have to decide this are the Board of Trustees. And if the Board of Trustees

cannot decide it because there is some problem it may well be that the members are going to have to decide it also. And they will have that opportunity.

But I would caution everybody that this matter may not be over today. And I caution everybody to be very careful and very circumspect because obviously whoever has authority to do anything will be watched very [13] closely by those who do not. Very closely.

And I caution you that we are going to still be here and I'm going to be here or another judge will oversee the matter.

That having been said, I believe that this matter is now ended.

– – –

(Proceedings concluded at 3:30 p.m.)

Appendix F

[14] CERTIFICATE

I hereby certify that the testimony and the proceedings in the aforegoing matter are contained fully and accurately in the stenographic notes taken by me and that the copy is a true and correct transcript of the same.

s/ Katherine L. Hirst
KATHERINE L. HIRST, R.P.R.
Official Court Reporter
Court of Common Pleas
Philadelphia, Pennsylvania

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying Shorthand Reporter.

APPENDIX G — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED AUGUST 2, 1994

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., ET AL

v.

ERIK SHELTON, ET AL

ORDER

AND NOW, this 2nd day of August, 1994, upon consideration of plaintiff's Petition to Vacate the Order to Withdraw, Discontinue and End filed on November 27, 1991, and upon consideration of defendant's response thereto in the nature of Preliminary Objections, it is hereby ORDERED AND DECREED that plaintiff's Petition be and is hereby denied and that the order to withdraw, discontinue and end shall remain in full force and effect.

BY THE COURT:

s/ Di Bona
ALFRED J. DI BONA, JR.
J.